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12

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

13 In re:  
 14 USA COMMERCIAL MORTGAGE COMPANY,  
 15 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

16 In re:  
 17 USA CAPITAL REALTY ADVISORS, LLC,  
 18 Debtor.

Chapter 11

19 In re:  
 20 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 21 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

22 In re:  
 23 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 24 Debtor.

25 In re:  
 26 USA SECURITIES, LLC,  
 27 Debtor.

**MOTION FOR ORDER APPROVING  
 CONTINUED USE OF CASH  
 THROUGH JANUARY 31, 2007  
 PURSUANT TO FOURTH REVISED  
 BUDGET (AFFECTS ALL DEBTORS)**

Affects:

- All Debtors
- USA Commercial Mortgage Company
- USA Capital Realty Advisors, LLC
- USA Capital Diversified Trust Deed Fund, LLC
- USA Capital First Trust Deed Fund, LLC
- USA Securities, LLC

Date: October 30, 2006  
 Time: 9:30 a.m.

1 USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty  
2 Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, and USA Capital First Trust  
3 Deed Fund, LLC (collectively, the “Debtors”), hereby move the Court for an order approving the  
4 Debtors’ continued use of cash through the week ending January 31, 2007, pursuant to a fourth  
5 revised cash budget which the Debtors will file on or before October 20, 2006.

## **POINTS AND AUTHORITIES**

### Facts

8       1. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code  
9 on April 13, 2006. By order entered June 9, 2006, the Court approved the joint administration of  
10 the Debtors' bankruptcy cases.

11       2. On April 14, 2006, the Debtors filed their Motion for Order Under 11 U.S.C. §§ 105(a),  
12 345, and 363 Approving Debtors' Proposed Cash Management Procedures and Interim Use of  
13 Cash In Accordance with Proposed Cash Budget (the "Cash Motion") (Docket No. 8), which  
14 sought, among other things, approval of the Debtors' limited use of cash for a limited 90-day  
15 period, through approximately July 15, 2005, as set forth in the cash budget (the "Initial Budget")  
16 attached as Exhibit A to the Cash Motion.

17       3. On April 19, 2006, the Court entered an Interim Order (Docket No. 32) approving the Cash  
18 Motion and the Debtors' interim use of cash for the purposes and on the terms set forth in the Cash  
19 Motion and the Initial Budget until May 3, 2006, when the Cash Motion was to be considered  
20 further at a hearing.

21       4. Several objections were filed to the Cash Motion and on May 2, 2006, the Debtors filed a  
22 Reply Brief (Docket No. 122) and a Supplemental Declaration of Thomas J. Allison (Docket No.  
23 130), in support of the Cash Motion, which included a revised cash budget (the “First Revised  
24 Budget”) attached as Exhibit B to the Supplemental Declaration.

25       5. At the May 3, 2006 hearing, the Court approved the Cash Motion and the limited use of  
26 cash to the extent and for the purposes reflected in the First Revised Budget through July 16, 2006.  
27 The Court's order granting this relief was entered on May 22, 2006 (the "First Cash Usage Order")  
28 (Docket No. 315).

1       6. Because the Debtors authority to use cash pursuant to the Cash Usage Order was going to  
2 expire on July 16, 2006, but the Debtors had a continuing need to use cash beyond that date, on  
3 May 30, 2006, Debtors filed their Motion for Order Approving Continued Use of Cash Through  
4 July 29, 2006 Pursuant to Second Revised Budget (the “Second Cash Motion”) (Docket No. 407),  
5 which second revised budget (the “Second Revised Budget”) was to be filed by June 5, 2006.

6       7. On June 5, 2006, the Debtors filed a Notice of Filing of 13-Week Cash Forecast (Docket  
7 No. 485) which contained a spreadsheet containing an updated cash forecast for the 13-week  
8 period specified therein.

9       8. On June 9, 2006, Debtors filed a Notice of Filing of Amended 13-Week Cash Forecast  
10 (Docket No. 557) which contained a spreadsheet containing an amended cash forecast for the 13-  
11 week period specified therein.

12       9. Several objections to the Second Cash Motion were filed on or before the June 21, 2006  
13 hearing date, and on June 20, 2006, the Debtors filed the Fifth Supplemental Declaration of  
14 Thomas J. Allison (the “Fifth Supplemental Declaration”) (Docket No. 750), in support of the  
15 Second Cash Motion, which further amended the Second Revised Budget.

16       10. At the June 21, 2006 hearing, the Court approved the Second Cash Motion and the limited  
17 use of cash to the extent and for the purposes reflected in the Second Revised Budget, as amended  
18 on June 20, 2006, through August 6, 2006 (the “Second Cash Usage Order”) (Docket No. 974).  
19 The Second Cash Usage Order was entered on July 25, 2006.

20       11. Because the Debtors authority to use cash pursuant to the Cash Usage Order was going to  
21 expire on August 6, 2006, but the Debtors had a continuing need to use cash beyond that date, on  
22 July 7, 2006, Debtors filed a Motion for Order Approving Continued Use of Cash Through  
23 October 29, 2006 Pursuant to Third Revised Budget (the “Third Cash Motion”) (Docket No. 846),  
24 which third revised budget (the “Third Revised Budget”) was to be filed by July 19, 2006.

25       12. On July 19, 2006, the Debtors filed a Notice of Filing of Third Revised Budget Applicable  
26 to Motion for Order Approving Continued Use of Cash Through October 29, 2006 Pursuant to  
27 Third Revised Budget (Docket No. 906) which contained a spreadsheet containing an updated  
28 cash forecast for the time period specified therein.

1       13. Several objections to the Third Cash Motion were filed on or before the August 4, 2006  
2 hearing date, and on August 2, 2006, the Debtors filed their Reply in Support of Third Cash  
3 Motion (Docket No. 1091) and the Declaration of Thomas J. Allison in Support of Debtors'  
4 Motion to be Heard August 4, 2006 (the "Supporting Declaration") (Docket No. 1090), which  
5 further amended the Third Revised Budget, attached as Exhibit F to the Supporting Declaration.

6       14. At the August 4, 2006 hearing, the Court approved the Third Cash Motion and the limited  
7 use of cash to the extent and for the purposes reflected in the Third Revised Budget, through  
8 October 29, 2006 (the “Third Cash Usage Order”). The Third Cash Usage Order was entered on  
9 September 14, 2006 (Docket No. 1282).

10       15. The Debtors' authority to use cash pursuant to the Third Cash Usage Order presently  
11 expires on October 29, 2006, but the Debtors will have a continuing need to use cash beyond that  
12 date to continue their business operations, to proceed with efforts to obtain confirmation of a plan  
13 of reorganization, and to complete the important administrative tasks they are performing, as  
14 described in prior motions and the various Declarations of Thomas J. Allison that have been filed  
15 in this case. Therefore, in order for the Debtors to have authority to use cash after October 29,  
16 2006, the Debtors request that the Court approve the additional use of cash to the extent and for  
17 the purposes set forth in a fourth revised budget (the "Fourth Revised Budget").

18       16. The Debtors file this motion at this time to ensure that it will be heard at the hearing  
19 scheduled for October 30, 2006, but the Debtors have not yet completed their work on the Fourth  
20 Revised Budget and will file it by no later than October 20, 2006.

## **MEMORANDUM OF LAW**

22 The factual and legal bases for the present motion are set forth in prior motions, the  
23 Declarations of Thomas J. Allison filed in these cases, and other documents on file with the Court.  
24 As with the Cash Motion, the Second Cash Motion, and Third Cash Motion, this motion seeks  
25 only permission to use funds the Debtors are contractually entitled to collect and use. Debtors are  
26 only seeking to use funds in the DIP Collection Account to the extent approved by the Court and  
27 to the extent that Debtors have contractual rights to collect servicing fees and other fees and costs

28 | //

## CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court approve the continuing use of cash in the Debtors' estates through the week ending January 31, 2007, to the extent and for the purposes set forth in the Fourth Revised Budget to be filed by the Debtors no later than October 20, 2006.

Respectfully submitted this 5<sup>th</sup> day of October, 2006

/s/ Lenard E. Schwartzer, Esq.

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